BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. RCRA-10-2020-0183
	)	
EMERALD KALAMA CHEMICAL, LLC,	)	**CONSENT AGREEMENT**
	)	
Kalama, Washington,	)	
	)	
Respondent.	)	

STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 3008 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928.

1.2. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), EPA granted the State of Washington final authorization to administer and enforce a hazardous waste program and to carry out such program in lieu of the federal program.

1.3. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), EPA may enforce the federally-approved Dangerous Waste program codified at Washington Administrative Code ("WAC") Chapter 173-303.

1.4. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), notification of this action has been given to State of Washington.

1.5. Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,"

40 C.F.R. Part 22, EPA issues, and Emerald Kalama Chemical, LLC ("Respondent") agrees to issuance of, the Final Order attached to this Consent Agreement ("Final Order").

PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Enforcement and Compliance Assurance Division, EPA Region 10 ("Complainant") has been delegated the authority pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, to sign consent agreements between EPA and the party against whom an administrative penalty for violations of RCRA is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of RCRA together with the specific provisions of RCRA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

A. Statutory and Regulatory Background

i. Definition of Hazardous Waste and Dangerous Waste and the RCRA Permit Requirement

3.1 Pursuant to Section 3001 of RCRA, 42 U.S.C. § 6921, EPA promulgated regulations to define what materials are "solid wastes," and of these solid wastes, what wastes are "hazardous wastes." These regulations are sent forth in 40 C.F.R. Part 261.

3.2 "Solid waste" is defined at 40 C.F.R. § 261.2 to mean any discarded material that is not otherwise excluded by regulation.

3.3 "Discarded material" is defined at 40 C.F.R. § 261.2(a)(2)(i) to mean, among other things, any material which is abandoned.

3.4 Pursuant to 40 C.F.R. § 261.2(b) materials are solid waste if, among other things, the solid wastes are abandoned by being disposed of; or burned or incinerated; or accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated.

3.5 Pursuant to 40 C.F.R. § 261.3 a solid waste is a "hazardous waste" if it is not excluded from regulation as a hazardous waste under 40 C.F.R. § 261.4(b); and, among other things, it exhibits any of the characteristics of hazardous waste in 40 C.F.R. Part 261, Subpart C, or if it is listed under 40 C.F.R. Part 261, Subpart D (and not excluded under 40 C.F.R. § 260.20 or § 260.22).

3.6 The regulation at WAC 173-303-016(3)(a) defines solid waste as "any discarded material that is not excluded by WAC 173-303-017(2) or that is not excluded by variance granted under WAC 173-303-017(5)." In accordance with WAC 173-303-016(4), "materials are solid waste if they are abandoned by being (a) disposed of; (b) burned or incinerated; or (c) accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated . . . ."

3.7 The regulation at WAC 173-303-040 defines "dangerous wastes" to mean "those solid wastes designated in WAC 173-303-070 through 173-303-100 as dangerous, or extremely hazardous or mixed waste." In accordance with WAC 173-303-070(3), a solid waste is a "dangerous waste" if, inter alia, the waste is a listed dangerous waste source under WAC 173-

303-082 or the waste exhibits any dangerous waste characteristics identified in WAC 173-303-090.

3.8 Section 3005 of RCRA prohibits the treatment, storage or disposal of hazardous waste without a permit or interim status, and the regulations at 40 C.F.R. § 270.1 requires a RCRA permit for the treatment, storage or disposal of any hazardous waste identified or listed in 40 C.F.R. Part 261. In accordance with WAC 173-303-800(2), the owner or operator of a dangerous waste facility that transfers, treats, stores, or disposes ("TSD") or recycles dangerous waste must obtain a permit covering, inter alia, the active life, closure period, and groundwater protection compliance period.

ii. Conditions for Exemption from the Requirement to Obtain a Permit Applicable to Large Quantity Generators of Dangerous Waste

3.9 The regulations at WAC 173-303-200 contain conditions for exemption for large quantity generators of dangerous waste from the permitting requirements of WAC 173-303-800(2). In accordance with WAC 173-303-200(3)(i) hazardous and dangerous wastes accumulated in containers must comply with the applicable requirements of 40 C.F.R. Part 265, Subparts AA, BB, and CC incorporated by reference in WAC 173-303-400(3)(a).

3.10 The regulations at WAC 173-303-040 define "tank" as "a stationary device, designed to contain an accumulation of dangerous waste which is constructed primarily of non-earthen materials to provide structural support."

3.11 The regulations at WAC 173-303-040 define "container" as "any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled."

3.12 The regulation 40 C.F.R. § 265.1083(a) states: "This section applies to the management of hazardous waste in tanks, surface impoundments, and containers subject to this subpart."

3.13 The regulation at 40 C.F.R. § 265.1083(b) states: "The owner or operator shall control air pollutant emissions from each hazardous waste management unit in accordance with standards specified in [40 C.F.R. §§ 265.1085 through 265.1088], as applicable to the hazardous waste management unit, except as provided for in [40 C.F.R. § 265.1083(c)]."

3.14 The regulation at 40 C.F.R. § 265.1087(a) states: "The provisions of this section apply to the control of air pollutant emissions from containers for which [40 C.F.R.] § 265.1083(b) of this subpart references the use of this section for such air emission control."

3.15 The regulation at 40 C.F.R. § 265.1087(b)(iii) states: "The owner or operator shall control air pollutant emissions from each container subject to this section in accordance with the following requirements, as applicable to the container: For a container having a design capacity greater than 0.46 [cubic meters ("m^3")] that is in light material service, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 2 standards specified in [40 C.F.R. § 265.1087(d)]."

3.16 The regulation at 40 C.F.R. § 265.1081 defines "in light material service" to mean "the container is used to manage a material for which both of the following conditions apply: The vapor pressure of one or more of the organic constituents in the material is greater than 0.3 kilopascals (kPa) at 20 °C and the total concentration of the pure organic constituents having a vapor pressure greater than 0.3 kPa at 20° C is equal to or greater than 20 percent by weight."

3.17 The regulation at 40 C.F.R. § 265.1087(d)(1) states: "A container using Container Level 2 controls is one of the following: (i) A container that meets the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as specified in [40 C.F.R. § 265.1087(f)]; (ii) A container that operates with no detectable organic emissions as defined in [40 C.F.R.] § 265.1081 of this subpart and determined in accordance with the procedure specified in [40 C.F.R. § 265.1087(g)]; (iii) A container that has been demonstrated within the preceding 12 months to be vapor-tight by using 40 CFR part 60, appendix A, Method 27 in accordance with the procedure specified in [40 C.F.R. § 265.1087(h)]."

iii. Air Emission Standards for Tanks, Surface Impoundments, and Containers

3.18 In accordance with WAC 173-303-692 owners and operators of all facilities that treat, store, and dispose of hazardous waste in tanks, surface impoundments, or containers subject to either WAC 173-303-630, WAC 173-303-640, or WAC 173-303-650 are subject to the requirements of 40 C.F.R. Part 264, Subpart CC. The regulation at WAC 173-303-692 incorporates by reference 40 C.F.R. Part 264, Subpart CC.

3.19 The regulation at 40 C.F.R. § 264.1086(a) states: "The provisions of this section apply to the control of air pollutant emissions from containers for which [40 C.F.R.] § 264.1082(b) of this subpart references the use of this section for such air emission control."

3.20 The regulation at 40 C.F.R. § 264.1086(b)(iii) states: "The owner or operator shall control air pollutant emissions from each container subject to this section in accordance with the following requirements, as applicable to the container: For a container having a design capacity

greater than 0.46 [cubic meters ("m^3")] that is in light material service, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 2 standards specified in [40 C.F.R. § 264.1086(d)]."

3.21 The regulation at 40 C.F.R. § 264.1081 incorporates 40 C.F.R. § 265.1081, which defines "in light material service" to mean "the container is used to manage a material for which both of the following conditions apply: The vapor pressure of one or more of the organic constituents in the material is greater than 0.3 kilopascals (kPa) at 20 °C; and the total concentration of the pure organic constituents having a vapor pressure greater than 0.3 kPa at 20° C is equal to or greater than 20 percent by weight."

3.22 The regulation at 40 C.F.R. § 264.1086(d)(1) states: "A container using Container Level 2 controls is one of the following: (i) A container that meets the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as specified in [40 C.F.R. 264.1086(f)]; (ii) A container that operates with no detectable organic emissions as defined in 40 C.F.R. § 265.1081 and determined in accordance with the procedure specified in [40 C.F.R. § 264.1086(g)]; (iii) A container that has been demonstrated within the preceding 12 months to be vapor-tight by using 40 CFR part 60, appendix A, Method 27 in accordance with the procedure specified in [40 C.F.R. § 264.1086(h)]."

iv. Air Emissions Standards for Equipment Leaks for Owners and Operators of Permitted Facilities

3.23 In accordance with WAC 173-303-600 owners and operators of all facilities which treat, store, or dispose of hazardous waste must comply with certain standards including

the standards in WAC 173-303-691. The regulation at WAC 173-303-691(2) incorporates by reference the standards in 40 C.F.R. Part 264, Subpart BB.

3.24 In accordance with WAC 173-303-691(1)(a) and 40 C.F.R. § 264.1050(a), "The regulations in [WAC 173-303-691 and 40 C.F.R. Part 264, Subpart BB] apply to owners and operators of facilities that treat, store, or dispose of hazardous wastes."

3.25 In accordance with WAC 173-303-691(1)(b) "Except as provided in 40 C.F.R. § 264.1064(k), [WAC 173-303-691] applies to equipment that contains or contacts hazardous wastes with organic concentrations of at least 10 percent by weight that are managed in one of the following: "(1) A unit that is subject to the permitting requirements of WAC 173-303-800 through 173-303-840 . . . or (3) A unit that is exempt from permitting under the provisions of WAC 173-303-200 (*i.e.,* a "ninety-day" tank or container) and is not a recycling unit under the provisions of WAC 173-303-120.

3.26 In accordance with 40 C.F.R. §§ 264.1051 and 264.1031, the term "equipment" is defined as "each valve, pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, or flange or other connector, and any control devices or systems required by this subpart."

3.27 In accordance with WAC 173-303-691(1)(d) and 40 C.F.R. § 264.1050(d), each piece of equipment to which 40 C.F.R. Part 264, Subpart BB applies shall be marked in such a manner that it can be distinguished readily from other pieces of equipment.

3.28 In accordance with 40 C.F.R. § 264.1057(a), "Each valve in gas/vapor or light liquid service shall be monitored monthly to detect leaks by the methods specified in

[40 C.F.R.] § 264.1063(b) and shall comply with [40 C.F.R. § 264.1057(b)-(e)], except as provided in [40 C.F.R. 264.1057(f), (g), and (h)], and [40 C.F.R.] §§ 264.1061 and 264.1062."

3.29 In accordance with 40 C.F.R. §§ 264.1051 and 264.1031, "in light liquid service" is defined to mean: "that the piece of equipment contains or contacts a waste stream where the vapor pressure of one or more of the organic components in the stream is greater than 0.3 kilopascals (kPa) at 20 °C, the total concentration of the pure organic components having a vapor pressure greater than 0.3 kilopascals (kPa) at 20 °C is equal to or greater than 20 percent by weight, and the fluid is a liquid at operating conditions."

3.30 In accordance with 40 C.F.R. §§ 264.1051 and 264.1031, "in heavy liquid service" is defined to mean: "that the piece of equipment is not in gas/vapor service or in light liquid service."

3.31 In accordance with 40 C.F.R. § 264.1064(b)(1), Owners and operators must record the following information in the facility operating record: For each piece of equipment to which subpart BB of part 264 applies: (i) Equipment identification number and hazardous waste management unit identification; (ii) Approximate locations within the facility (e.g., identify the hazardous waste management unit on a facility plot plan); Type of equipment (e.g., a pump or pipeline valve); Percent-by-weight total organics in the hazardous waste stream at the equipment; (v) Hazardous waste state at the equipment (e.g., gas/vapor or liquid); (vi) Method of compliance with the standard (e.g., "monthly leak detection and repair" or "equipped with dual mechanical seals").

3.32 In accordance with 40 C.F.R. § 264.1060(a), Owners and operators of closed-vent systems and control devices subject to this subpart shall comply with the provisions of 40 C.F.R. § 264.1033 of this part.

3.33 In accordance with 40 C.F.R. § 264.1033(h), An owner or operator using a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly onsite in the control device shall replace the existing carbon in the control device with fresh carbon on a regular basis by using one of the following procedures: (1) Monitor the concentration level of the organic compounds in the exhaust vent stream from the carbon adsorption system on a regular schedule, and replace the existing carbon with fresh carbon immediately when carbon breakthrough is indicated. The monitoring frequency shall be daily or at an interval no greater than 20 percent of the time required to consume the total carbon working capacity established as a requirement of 40 C.F.R. § 264.1035(b)(4)(iii)(G), whichever is longer; or (2) Replace the existing carbon with fresh carbon at a regular, predetermined time interval that is less than the design carbon replacement interval established as a requirement of 40 C.F.R. § 264.1035(b)(4)(iii)(G).

B. Respondent's Permit to Treat Hazardous Waste

3.34 On June 1, 2011, EPA and the Washington Department of Ecology issued Respondent a Permit with permit number WAD092899574 for the treatment of hazardous waste ("Permit").

3.35 Section II.K of the Permit states: "The Permittee shall comply with the organic air emission standards for equipment leaks in 40 CFR §266.100(b)(2) and 40 C.F.R. Part 264, Subpart BB and as specifically set forth in Attachment H of this Permit."

3.36 The permit applies to the treatment of hazardous waste in the U-3 Boiler Hazardous Waste Management Unit, which includes:

a) The hazardous waste feed system, which is comprised of the pump, piping, valves, meter, gun and atomizer between tank T-313F and the U-3 Boiler;

b) U-3 Boiler and the associated controls and economizer;

c) All exhaust gas handling equipment associated with the boiler including the ID fan, spark arrestor, baghouse, and ductwork; and

d) The exhaust stack.

3.37 Section 3.1.1.1 of Attachment H of the Permit states: In accordance with 40 C.F.R. §264.1064(b) and §264.1064(g), the following information for each piece of equipment (except welded fittings) to which Subpart BB applies will be recorded. A list of all hazardous waste facility equipment that is leak monitored is included in the operating record. This list contains the following information on each piece of monitored equipment:

a) Equipment tag number

b) Size in inches

c) Type of equipment

d) Location of each piece

e) The state of the waste (i.e., gas/vapor {"G"} or liquid {"L"})

3.38 Section 1.9 of Attachment H of the Permit states: "Closed-vent systems and control devices are covered in 40 C.F.R. § 264.1060. There is only one closed-vent system at the hazardous waste facility. This closed-vent system connects the pressure relief device on the tank

to a non-regenerative activated carbon canister control device. Requirements for this type of control device are discussed further in 40 C.F.R. § 264.1033(h)."

C. General Allegations

3.39 Respondent operates the chemical manufacturing facility located at 1296 Third Street N.W., Kalama, Washington ("Facility").

3.40 At all times relevant to this Consent Agreement, Respondent manufactured at the Facility a variety of chemicals that have applications as food preservatives, artificial flavorings, fragrances, chemical intermediates, plasticizers, and adhesives.

3.41 At all times relevant to this Consent Agreement, the Facility was comprised of multiple production areas and units, including the Specialty Department and Benzyl Alcohol Process Unit ("V-8501").

3.42 Between at least June 1, 2018, and the present, Respondent generated dangerous waste at the Specialty Department and V-8501 within the Facility as the term dangerous waste is defined at WAC 173-303-040. All of the dangerous waste that Respondent generated also met the definition of hazardous waste in 40 C.F.R. Part 261, Subpart C.

3.43 At all times relevant to this Consent Agreement, all of the dangerous waste generated by Respondent alleged in 3.42 contained at least 10 percent organic content by weight.

3.44 At all times relevant to this Consent Agreement, all of the dangerous waste generated by Respondent within V-8501 contained a concentration of pure organic constituents of greater than 20 percent by weight and a vapor pressure of greater than 0.3 kPa at 20 °C.

3.45 Between at least May 13, 2019, and the present, Respondent accumulated the dangerous waste generated within V-8501 as alleged in Paragraphs 3.42 through 3.44 in a container referred to as "Truck Trailer #3."

3.46 At all times relevant to this Consent Agreement, Truck Trailer #3 had a capacity greater than 0.46 m^3.

3.47 At all times relevant to this Consent Agreement, Truck Trailer #3 has been "in light material service" as that phrase is defined in 40 C.F.R. §§ 264.1081 and 265.1081.

3.48 Between at least May 13, 2019, and the present, Respondent accumulated dangerous waste generated within the Specialty Department from process units V-1150, V-1181, V-1191, V-1211, and V-1270 and transferred those wastes into the following containers: Trailer #5, Trailer #6, Trailer #7, Trailer #8, Trailer #9, Trailer #10, Trailer #11, and Trailer #13 ("Heavy Liquid Truck Trailers").

3.49 At no time relevant to this Consent Agreement has Truck Trailer #3 nor the Heavy Liquid Truck Trailers constituted recycling units under the provisions of WAC 173-303-120.

3.50 Between at least May 13, 2019, and the present, Respondent conveyed the dangerous waste from the Specialty Plant to the Heavy Liquid Truck Trailers through piping manifolds attached to V-1151, V-1181, V-1191, V-1211, and V-1270 ("Manifolds"). Between at least May 13, 2019, and the present, each of the Manifolds contained at least two valves ("Manifold Valves"). Therefore, between at least May 13, 2019, and the present, each of the Manifold Valves met the definition of "equipment" in 40 C.F.R. §§ 264.1051 and 264.1031.

3.51 Between at least May 13, 2019, and the present, the Manifold Valves contained or contacted dangerous waste with organic concentrations of at least 10 percent by weight for at least 300 hours each calendar year.

3.52 Pursuant to WAC 173-303-691(1)(b)(iii) and 40 C.F.R. § 264.1050(b)(3), between at least May 13, 2019, and the present, the Manifold Valves used to convey dangerous waste into the Heavy Liquid Truck Trailers as alleged in Paragraph 3.50 have been subject to the standards in 40 C.F.R. Part 264, Subpart BB incorporated by reference at WAC 173-303-691(2).

3.53 At all times relevant to this Consent Agreement, Respondent transferred the dangerous waste accumulated in Truck Trailer #3 and the Heavy Liquid Truck Trailers as alleged in Paragraphs 3.45 and 3.48 to Tank T-313F.

3.54 At all times relevant to this Consent Agreement, Respondent treated the dangerous waste accumulated in Tank T-313F in Boiler U-3.

3.55 Between at least June 1, 2018, and the present, Respondent routed volatile organic vapor emissions from Tank T-313F through a non-regenerative carbon absorption unit ("F-313"). At no time relevant to this Consent Agreement has Respondent replaced the existing carbon within F-313 with fresh carbon on a regular, predetermined replacement interval pursuant to 40 C.F.R. § 264.1033(h)(2). Therefore, at all times relevant to this Consent Agreement Respondent was required to "monitor the concentration level of the organic compounds in the exhaust vent stream from the [F-313] on a regular schedule, and replace the existing carbon with fresh carbon immediately when carbon breakthrough is indicated" in accordance with 40 C.F.R. § 264.1033(h)(1).

3.56 At all times relevant to this Consent Agreement, Respondent has been a Large Quantity Generator ("LQG") of dangerous waste as the term LQG is defined in WAC 173-303-040 and WAC 173-303-169.

3.57 At no time relevant to this Consent Agreement has the Permit authorized storage of hazardous waste or dangerous waste at the Facility. At no time relevant to this Consent Agreement has Respondent obtained a permit to store hazardous waste or dangerous waste at the Facility. Therefore, at all times relevant to this Consent Agreement, Respondent was required to accumulate the dangerous waste generated in the Specialty Department and V-8501, as alleged in Paragraphs 3.42 through 3.48 in Truck Trailer #3, the Heavy Liquid Truck Trailers, and Tank T-313F in accordance with conditions for exemption from obtaining a permit contained in WAC 173-303-200.

3.58 Between at least May 13, 2019, and the present, a piping endcap in place of components U3-2 and U3-2.1 has been attached to the U-3 Boiler (hereinafter "U-3 Boiler Endcap").

3.59 Between at least May 13, 2019, and the present, the U-3 Boiler Endcap contained or contacted dangerous waste with organic concentrations of at least 10 percent by weight for at least 300 hours each calendar year.

3.60 Therefore, pursuant to WAC 173-303-691(1)(b)(i), 40 C.F.R. § 264.1050(b)(1) and Section II.K and Attachment H of the Permit, between at least May 13, 2019, and the present, the U-3 Boiler Endcap has been subject to the requirements in 40 C.F.R. Part 264, Subpart BB.

D. Violation 1: Failure to Obtain a Permit to Store Dangerous Waste in Truck Trailer #3

3.61 At no time between at least May 13, 2019, and the present, has Truck Trailer #3 complied with the requirements in 49 C.F.R. § 178.345-14 as incorporated by reference into the Container Level 2 standards in 40 C.F.R. § 265.1087(d).

3.62 At no time between at least May 13, 2019, and July 23, 2020, did Truck Trailer #3 operate with no detectable organic emissions as defined in 40 C.F.R. § 265.1081 and determined in accordance with the procedure specified in 40 C.F.R. §§ 265.1087(g) and 265.1084(d).

3.63 At no time between at least May 13, 2019, and the present has Truck Trailer #3 been demonstrated to be vapor-tight by using 40 C.F.R. Part 60, Appendix A, Method 27 in accordance with the procedure specified in 40 C.F.R. § 265.1087(h).

3.64 Therefore, at no time between May 13, 2019, and July 23, 2020, has Truck Trailer #3 complied with the Container Level 2 standards in 40 C.F.R. 265.1087(d) as those requirements are incorporated by reference into the conditions for exemption from obtaining a permit in WAC 173-303-200(3)(i) and WAC 173-303-400.

3.65 Therefore, between May 13, 2019, and July 23, 2020, Respondent failed to obtain a permit to store dangerous waste in Truck Trailer #3 in violation of WAC 173-303-800(2).

E. Violation 2: Failure to Comply with the Container Level 2 Standards

3.66 Between at least May 13, 2019 and the present, Truck Trailer #3 has been subject to the requirements of WAC 173-303-692.

3.67 At no time between at least May 13, 2019, and the present, has Truck Trailer #3 complied with the requirements in 49 C.F.R. § 178.345-14 as incorporated by reference into the Container Level 2 standards in 40 C.F.R. § 264.1086(d).

3.68 At no time between at least May 13, 2019, and July 23, 2020, did Truck Trailer #3 operate with no detectable organic emissions as defined in 40 C.F.R. § 264.1081 and determined in accordance with the procedure specified in 40 C.F.R. §§ 264.1086(g) and 264.1083(d).

3.69 At no time between at least May 13, 2019, and the present has Truck Trailer #3 been demonstrated to be vapor-tight by using 40 C.F.R. Part 60, appendix A, Method 27 in accordance with the procedure specified in 40 C.F.R. § 264.1086(h).

3.70 Therefore, between at least May 13, 2019, and July 23, 2020, Truck Trailer #3 failed to comply with the Container Level 2 standards in 40 C.F.R. 264.1086(d)

3.71 Therefore, between at least May 13, 2019, and July 23, 2020, Respondent violated WAC 173-303-692.

F. Violations 3 through 13: Failure to Mark Each Piece of Equipment

3.72 On at least one occasion between May 13, 2019, and the present, Respondent failed to mark the Manifold Valves in such a manner that the Manifold Valves can be distinguished readily from other pieces of equipment in violation of Section II.K of the Permit, 40 C.F.R. § 264.1050(d), and WAC 173-303-691(1)(d).

3.73 On at least one occasion between May 13, 2019, and the present, Respondent failed to mark the U-3 Boiler Endcap in such a manner that the equipment can be distinguished readily from other pieces of equipment in violation of Section II.K of the Permit, 40 C.F.R. § 264.1050(d), and WAC 173-303-691(1)(d).

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G. Violations 14 through 24: Failure to Include Each Piece of Equipment in the Operating Record

3.74 On at least one occasion between May 13, 2019, and the present, Respondent failed to include information regarding the Manifold Valves in the facility operating record in violation of Section II.K and Attachment H, Section 3.1.1.1 of the Permit, 40 C.F.R. § 264.1064(b)(1), and WAC 173-303-691(2).

3.75 On at least one occasion between May 13, 2019, and the present, Respondent failed to include information regarding the U-3 Boiler Endcap in the facility operating record in violation of Section II.K and Attachment H, Section 3.1.1.1 of the Permit, 40 C.F.R. § 264.1064(b)(1), and WAC 173-303-691(2).

H. Violations 25 through 29: Failure to Replace the Carbon in F-313 Immediately when Carbon Breakthrough was Indicated

3.76 On or around June 12, 2018, Respondent monitored greater than 895 parts per million of volatile organics emitted from F-313. This level indicates a carbon breakthrough.

3.77 Therefore, in accordance with Attachment H, Section 1.9 of the Permit, 40 C.F.R. § 264.1033(h)(1), 40 C.F.R. § 264.1060, and WAC 173-303-691(2), Respondent was required to replace the carbon in F-313 immediately.

3.78 Respondent did not replace the carbon in F-313 until June 18, 2018, in violation of Attachment H, Section 1.9 of the Permit, 40 C.F.R. § 264.1033(h)(1), 40 C.F.R. § 264.1060, and WAC 173-303-691(2).

I. Enforcement Authority

3.79 Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. Part 19, for violations that occurred after November 2, 2015, where penalties are assessed on or after January 13, 2020, EPA may assess a civil penalty of not more than $61,098 per day of noncompliance for

each violation of a requirement of Subtitle C of RCRA, issue an order requiring compliance, or both.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement

4.3. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3). After considering these factors, EPA has determined that an appropriate penalty to settle this action is $121,478 (the "Assessed Penalty").

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order, and to undertake the actions specified in this Consent Agreement.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: http://www2.epa.gov/financial/makepayment. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk U.S. Environmental Protection Agency R10_RHC@epa.gov	U.S. Environmental Protection Agency Region 10, Enforcement and Compliance Assurance Division R10enforcement@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of the Assessed Penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below. In any collection action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.8. If Respondent fails to pay any portion of the Assessed Penalty by this Consent Agreement and the Final Order in full by its due date, Respondent shall also be responsible for payment of the following amounts:

a) Interest. Pursuant to 31 U.S.C. § 3717(a)(1), any unpaid portion of the Assessed Penalty shall bear interest at the rate established by the Secretary of the Treasury from the effective date of the Final Order attached hereto, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order attached hereto.

b) Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of $15 shall be paid if any portion of the Assessed Penalty is more than 30 days past due.

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c) Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the Assessed Penalty that is more than 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

4.9. Under Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), failure to take corrective action within the time specified in this Consent Agreement may subject Respondent to additional civil penalties for each day of continued noncompliance and may subject Respondent to the permitting requirements of WAC 173-303-800(2) based on the accumulation of dangerous waste in containers or tanks in noncompliance with the conditions for exemption from permitting at WAC 173-303-200.

4.10. Based on the findings contained in this Consent Agreement, Respondent is also ordered to comply with the following requirements pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

a) Within 30 days of the effective date of this Consent Agreement, Respondent shall identify all equipment subject to WAC 173-303-691, including the Manifold Valves and U-3 Boiler Endcap, and submit an updated operating record to EPA and Washington Department of Ecology listing all equipment subject to WAC 173-303-691.

b) Within 30 days of the effective date of this Consent Agreement, Respondent shall:

i. mark the Manifold Valves and U-3 Boiler Endcap in a manner that this equipment can be distinguished readily from other pieces of equipment (WAC 173-303-691(1)(d)) and

ii. provide EPA and the Washington Department of Ecology documentation, such as photographs, demonstrating that this equipment has been marked in accordance with WAC 173-303-691(1)(d).

c) Within 60 days of the effective date of this Consent Agreement, Respondent shall either:

i. submit to EPA and the Washington Department of Ecology a report that (A) contains the results of any determination conducted on Truck Trailer #3 pursuant to 40 C.F.R. §§ 265.1087(g) prior to the effective date of this Consent Agreement, (B) demonstrates that Respondent followed the procedures specified in 40 C.F.R. §§ 265.1087(g), 265.1084(d) and Method 21 of 40 C.F.R. Part 60, appendix A in conducting such determination, and (C) demonstrates that Truck Trailer #3 operates with no detectable organic emissions in accordance with 40 C.F.R. §§ 265.1087(g) and 265.1084(d); or

ii. determine whether Truck Trailer #3 operates with no detectable organic emissions in accordance with the procedures specified in 40 C.F.R. §§ 265.1087(g), 265.1084(d) and Method 21 of 40 C.F.R. Part 60, appendix A.

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d) If Respondent does not submit a report to EPA and the Washington Department of Ecology in accordance with Paragraph 4.10(c)(i), then within 45 days of conducting the determination required by Paragraph 4.10(c)(ii), Respondent shall submit to EPA and the Washington Department of Ecology a report that contains the results of the determination required by Paragraph 4.10(c)(ii) and demonstrates that Respondent followed the procedures specified in 40 C.F.R. §§ 265.1087(g), 265.1084(d) and Method 21 of 40 C.F.R. Part 60, appendix A.

4.11. Respondent shall provide all reports and compliance documentation required by Paragraph 4.10 to the following addresses:

Mr. Gregory Gould, P.E.
Washington State Department of Ecology
Solid Waste Management, Industrial Section
P.O. Box 47600
Olympia, Washington 98504
Greg.gould@ecy.wa.gov

R10enforcement@epa.gov
U.S. Environmental Protection Agency
Region 10,
Enforcement and Compliance Assurance Division

4.12. The Assessed Penalty, including any additional costs incurred under Paragraphs 4.8 and 4.9, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.13. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.14. Except as described in Paragraphs 4.8 and 4.9, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.15. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

4.16. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Consent Agreement and the Final Order, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

4.17. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.18. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this Consent Agreement, and to any stated permit action.

4.19. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED: September 28th 2020

FOR RESPONDENT:

EDWARD T. GOTCH, Chief Executive Officer
Emerald Kalama Chemical, LLC

DATED:

FOR COMPLAINANT:

EDWARD KOWALSKI

Digitally signed by EDWARD KOWALSKI
Date: 2020.10.01 11:36:47 -07'00'

EDWARD J. KOWALSKI, Director
Enforcement & Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. RCRA-10-2020-0183
	)	
EMERALD KALAMA CHEMICAL, LLC,	)	**FINAL ORDER**
	)	
Kalama, Washington,	)	
	)	
Respondent.	)	

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under RCRA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of RCRA and regulations promulgated or permits issued thereunder.

U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 155, 11-C07
Seattle, Washington 98101
(206) 553-1037

g2c

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this _____ day of _____, 2020.

RICHARD MEDNICK

Digitally signed by RICHARD MEDNICK
Date: 2020.10.01 14:36:22 -07'00'

RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10

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Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Emerald Kalama Chemical, LLC, Docket No.: RCRA-10-2020-0183**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered via electronic mail to:

Brett S. Dugan
Assistant Regional Counsel
U.S. Environmental Protection Agency
Dugan.brett@epa.gov

Sloane Wildman, Esq.
Counsel for Emerald Kalama Chemical, LLC
Perkins Coie LLP
SWildman@perkinscoie.com

DATED this _____ day of _____, 2020.

Young, Teresa L.
Digitally signed by Young, Teresa L.
Date: 2020.10.05 11:05:53 -07'00'

TERESA YOUNG
Regional Hearing Clerk
EPA Region 10